

1 BILL NO. S-90-05-38

2 SPECIAL ORDINANCE NO. S-128-90

3 AN ORDINANCE approving CONTRACT #90-02,  
4 HILLCREST PH. III WATER MAIN REPLACEMENT  
5 between DEHNER CONSTRUCTION INC. and the  
6 City of Fort Wayne, Indiana, in  
7 connection with the Board of Public  
8 Works and Safety.

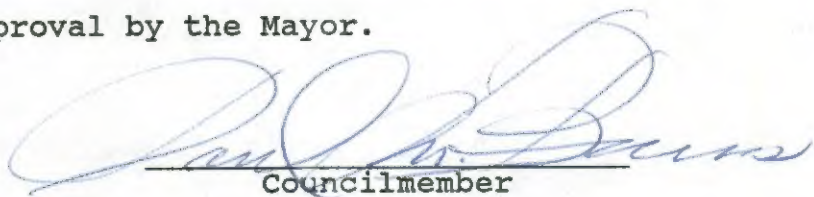
9 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
10 THE CITY OF FORT WAYNE, INDIANA:

11 SECTION 1. That the CONTRACT #90-02 HILLCREST PH. III  
12 WATER MAIN REPLACEMENT by and between DEHNER CONSTRUCTION  
13 INC. and the City of Fort Wayne, Indiana, in connection with  
14 the Board of Public Works and Safety, for:

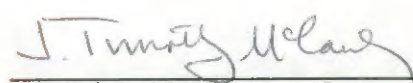
15 Installation of 4310+/-LF of 6" Ductile  
16 iron water main on Edgeknoll Lane from  
17 Calhoun Street SE to Corwin Land: also  
18 on Corwin Lane from Edgeknoll Lane to  
19 its NW terminus;

20 the Contract price is One Hundred Six Thousand Four Hundred  
21 Nine and 24/100 Dollars (\$106,409.24), all as more  
22 particularly set forth in said Contract, which is on file in  
23 the Office of the Board of Public Works and Safety and, is  
24 by reference incorporated herein, made a part hereof, and is  
25 hereby in all things ratified, confirmed and approved. Two  
26 (2) copies of said Contract are on file with the Office of  
27 the City Clerk and made available for public inspection,  
28 according to law.

29 SECTION 2. That this Ordinance shall be in full force  
30 and effect from and after its passage and any and all  
31 necessary approval by the Mayor.

32   
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

  
J. Timothy McCaulay, City Attorney

ITEM #	DESCRIPTION	QUANT.	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
1	16" DUCTILE IRON WATER MAIN	4310	LF	\$18.00	\$77,580.00	\$13.10	\$56,461.00	\$19.90	\$85,769.00	\$17.55	\$75,440.50
2	11 1/4 DEGREE ELBOW	2	EA	\$200.00	\$400.00	\$125.00	\$250.00	\$488.00	\$176.00	\$77.17	\$154.34
3	16" X 6" X 6" TEES	3	EA	\$240.00	\$720.00	\$200.00	\$600.00	\$135.00	\$405.00	\$103.70	\$311.10
4	16" VALVE W/BOX	9	EA	\$400.00	\$3,600.00	\$300.00	\$2,700.00	\$250.00	\$2,250.00	\$144.80	\$1,303.20
5	TYPE III FIRE HYDRANT ASSEMBLY	5	EA	\$1,500.00	\$7,500.00	\$1,304.00	\$6,520.00	\$1,275.00	\$6,375.00	\$1,533.32	\$7,666.60
6	TYPE V FIRE HYDRANT ASSEMBLY	1	EA	\$1,300.00	\$1,300.00	\$1,131.00	\$1,131.00	\$1,100.00	\$1,100.00	\$1,372.50	\$1,372.50
7	RESIDENTIAL CONCRETE DRIVE	300	LF	\$21.00	\$6,300.00	\$23.00	\$6,900.00	\$20.00	\$6,000.00	\$2.80	\$2,400.00
8	RESIDENTIAL ASPHALT DRIVE	100	LF	\$19.00	\$1,900.00	\$15.00	\$1,500.00	\$12.00	\$1,200.00	\$4.86	\$486.00
9	RESIDENTIAL STONE DRIVE	300	LF	\$4.00	\$1,200.00	\$2.00	\$600.00	\$1.75	\$525.00	\$1.16	\$348.00
10	ASPHALT STREET	200	LF	\$24.00	\$4,800.00	\$17.00	\$3,400.00	\$12.00	\$2,400.00	\$9.17	\$1,834.00
11	CONCRETE SIDEWALK	455	LF	\$16.00	\$7,280.00	\$10.00	\$4,550.00	\$9.65	\$4,390.75	\$10.98	\$4,995.90
12	CONCRETE CURB	50	LF	\$15.00	\$750.00	\$11.00	\$550.00	\$11.00	\$550.00	\$12.10	\$605.00
13	GRASS RESTORATION	4310	LF	\$1.50	\$6,465.00	\$0.80	\$3,448.00	\$0.90	\$3,879.00	\$0.91	\$3,922.10
14	RIGHT OF WAY CUT PERMIT	1	EA	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00
	TOTAL BASE BID				\$122,195.00		\$91,010.00		\$117,779.75		\$106,409.24

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2	11 1/4 DEGREE ELBOW	2	EA	\$200.00	\$400.00	\$129.00	\$258.00	\$488.00	\$176.00	\$77.17	\$154.34
3	16" X 6" X 6" TEES	3	EA	\$240.00	\$720.00	\$206.00	\$498.00	\$135.00	\$405.00	\$103.70	\$311.10
4	16" VALVE W/BOX	9	EA	\$400.00	\$3,600.00	\$309.00	\$2,781.00	\$250.00	\$2,250.00	\$144.80	\$1,303.20
5	TYPE III FIRE HYDRANT ASSEMBLY	5	EA	\$1,500.00	\$7,500.00	\$1,343.00	\$6,715.00	\$1,275.00	\$6,375.00	\$1,533.32	\$7,666.60
6	TYPE V FIRE HYDRANT ASSEMBLY	1	EA	\$1,300.00	\$1,300.00	\$1,165.00	\$1,165.00	\$1,100.00	\$1,100.00	\$1,372.50	\$1,372.50
7	RESIDENTIAL CONCRETE DRIVE	300	LF	\$21.00	\$6,300.00	\$23.70	\$7,110.00	\$20.00	\$6,000.00	\$2.80	\$2,400.00
8	RESIDENTIAL ASPHALT DRIVE	100	LF	\$19.00	\$1,900.00	\$15.45	\$1,545.00	\$12.00	\$1,200.00	\$4.86	\$486.00
9	RESIDENTIAL STONE DRIVE	300	LF	\$4.00	\$1,200.00	\$2.06	\$618.00	\$1.75	\$525.00	\$1.15	\$345.00
10	ASPHALT STREET	200	LF	\$24.00	\$4,800.00	\$17.50	\$3,500.00	\$12.00	\$2,400.00	\$9.17	\$1,834.00
11	CONCRETE SIDEWALK	455	LF	\$16.00	\$7,280.00	\$10.30	\$4,584.50	\$9.65	\$4,390.75	\$10.98	\$4,995.90
12	CONCRETE CURB	50	LF	\$15.00	\$750.00	\$11.33	\$566.50	\$11.00	\$550.00	\$12.10	\$605.00
13	GRASS RESTORATION	4310	LF	\$1.50	\$6,465.00	\$0.84	\$3,620.40	\$0.90	\$3,879.00	\$0.91	\$3,922.10
14	RIGHT OF WAY CUT PERMIT	1	EA	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00
	TOTAL BASE BID				\$122,195.00		\$93,765.40		\$117,779.75		\$106,409.24

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	TOTAL BASE BID				\$122,195.00		\$93,765.40		\$117,779.75		\$106,409.24

CONSTRUCTION CONTRACT

Board Order 17-90

Contract 90-02

Work Order 64169

THIS CONTRACT made and entered into in triplicate this <sup>9<sup>th</sup></sup> day of May, 1990, by and between DEHNER CONSTRUCTION INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

INSTALL 4310 ± LF OF 6" DUCTILE IRON WATER MAIN ON EDGEKNOLL LANE FROM CALHOUN STREET SOUTHEASTERLY TO CORWIN LANE; ALSO ON CORWIN LANE FROM EDGEKNOLL LANE TO ITS NORTHWESTERLY TERMINUS.

All according to Fort Wayne Water Utility, Drawing No. Y-10657, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The owner shall pay CONTRACTOR for the performance of the contract, the unit price sum of \$106,409.24 (ONE HUNDRED SIX THOUSAND FOUR HUNDRED NINE DOLLARS AND twenty four cents). In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR'S Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

#### **ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works and Safety** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection. When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works and Safety**, which shall issue a **final certificate** stating that the work provided for in this Contract has been completed and is accepted. Thereupon, the **entire balance** of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana** and **Ordinances of the City of Fort Wayne**.

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Industrial Board of the State of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

#### **ARTICLE 6: NONDISCRIMINATION OF LABOR**

The **CONTRACTOR** further agrees to be bound by **Section 15-13 (as amended)**, of the **Code of the City of Fort Wayne, Indiana** of 1974, passed by the **Common Council of the City of Fort Wayne, Indiana** as **General Ordinance No. G-34-78 (as amended)** on December 12th, 1978. The successful bidder shall file a **Manpower Utilization Report** for this project with the **Compliance Office** within ten (10) days after completion of construction or upon request of the **Office of Compliance**.

#### ARTICLE 7: PREVAILING WAGE SCALE

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the **Statutes of the State of Indiana**, and the **Ordinances of the City of Fort Wayne** according to the applicable wage scale as included in the bid documents.

#### ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids for Contract No. 90-02
- b. Instructions to Bidders for Contract No. 90-02
- c. Contractor's Proposal dated 7 March 1990
- d. Fort Wayne Engineering Department Drawing Y-10657
- e. Supplemental Specifications for Contract No. 90-02
- f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- h. Prevailing Wage Scale.
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond.
- k. Right-of-Way Cut Permit.
- l. Comprehensive Liability Insurance Coverage.
- m. Form 96.

#### ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the **OWNER**.

#### ARTICLE 10: INDEMNITY

**CONTRACTOR** shall furnish to **OWNER**, within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the **Statutes of the State of Indiana**.

**ARTICLE 11: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the **Director of Board of Public Works and Safety** of the **OWNER**, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works and Safety**.

**ARTICLE 12: COMPLETION DATE**

The **CONTRACTOR** agrees to complete the work specified in the contract within one hundred and eighty (180) **consecutive calendar days** after having been ordered by the **OWNER** to commence work under this contract.

**ARTICLE 13: COUNCILMANIC APPROVAL**

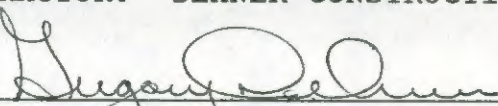
This Agreement, although executed on behalf of the **OWNER** by the **Mayor and Board of Public Works and Safety** of the **City of Fort Wayne, Indiana**, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana**, and should said **Common Council** fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

**ARTICLE 14:**

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.


CONTRACTOR: DEHNER CONSTRUCTION INC


By:   
Gregory Dehner, President

CITY OF FORT WAYNE

By:   
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

By:   
Charles E. Layton, Director  
Public Works

By:   
Michael McAlexander, Director  
Public Safety

By: \_\_\_\_\_  
Douglas M. Lehman, Director  
Administration and Finance

ATTEST:

  
Helen V. Gochenour, Clerk

# CERTIFICATE OF INSURANCE

DATE: 04/13/90

## PRODUCER

Yaste, Zent & Rye Agency, Inc.  
127 W. Barry St., Ste. 1200  
P.O. Box 1367  
Fort Wayne, IN 46801  
(219) 423-1591

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHT UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

## COMPANIES AFFORDING COVERAGE

COMPANY LETTER	A	FIREMAN'S FUND
COMPANY LETTER	B	TRANSAMERICA INSURANCE COMPANY
COMPANY LETTER	C	
COMPANY LETTER	D	
COMPANY LETTER	E	

## INSURED

John Dehner, Inc.  
1206 Clark St.  
P.O. Box 11346  
Fort Wayne, IN 46857

## COVERAGES

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY CLAIMS MADE

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	ALL LIMITS IN THOUSANDS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [X] [ ] CLAIMS MADE [X] OCCURRENCE [ ] OWNER'S & CONTRACTORS PROTECTIVE [ ]	HXX 8040 9452	01/01/90	01/01/91	GENERAL AGGREGATE	\$ 2000
					PRODUCTS-COMP/OPS AGGREGATE	\$ 2000
					PERSONAL & ADVERTISING INJURY	\$ 1000
					EACH OCCURRENCE	\$ 1000
					FIRE DAMAGE (ANY ONE FIRE)	\$ 50
					MEDICAL EXPENSE (ANY ONE PERSON)	\$ 5
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS [ ] GARAGE LIABILITY [ ]	HXX 8040 9452	01/01/90	01/01/91	CSL	\$ 1000
					BODILY INJURY (PER PERSON)	\$
					BODILY INJURY (PER ACCIDENT)	\$
					PROPERTY DAMAGE	\$
A	EXCESS LIABILITY [X] UMBRELLA FORM [ ] OTHER THAN UMBRELLA	XOK 212 8760	01/01/90	01/01/91	EACH OCCURRENCE	AGGREGATE
					\$ 2000	\$ 2000
B	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY	8013 6096	01/01/90	01/01/91	STATUTORY	
					\$ 100	(EACH ACCIDENT)
					\$ 500	(DISEASE-POLICY LIMIT)
					\$ 100	(DISEASE-EACH EMPLOYEE)
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
RE: Water Lines 90-02 Hillcrest Phase III, 106,409.24

ANY AND ALL OPERATIONS OF THE NAMED INSURED. LIMITS SHOWN ARE THOSE IN EFFECT AS OF POLICY INCEPTION.

===== CERTIFICATE HOLDER =====

===== CANCELLATION =====

City of Fort Wayne  
Board of Public Works & Safety  
One Main Street  
Fort Wayne, IN 46802

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*John J. Pikel*

# FIDELITY AND GUARANTY INSURANCE COMPANY



## Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

DEHNER CONSTRUCTION, INC.  
2110 Lower Huntington Road  
Fort Wayne, IN 46819

**SURETY (Name and Principal Place of Business):**

FIDELITY AND GUARANTY INSURANCE COMPANY  
135 N. Pennsylvania Ave., Suite 1000  
Indianapolis, IN 46204

**OWNER (Name and Address):**

City of Fort Wayne  
Board of Public Works & Safety  
1 Main Street  
Fort Wayne, IN 46802

**CONSTRUCTION CONTRACT**

Date: April 16, 1990

Amount: \$106,409.24

Description (Name and Location): Water Contract 90-02; Hillcrest Phase III  
Water Main Replacement

**BOND**

Date (Not earlier than Construction Contract Date): April 16, 1990

Amount: \$106,409.24

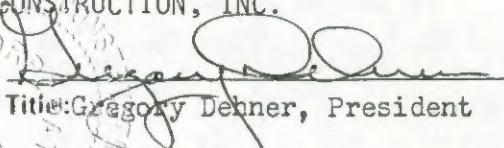
Modifications to this Bond:

☒ None

☐ See Page 3

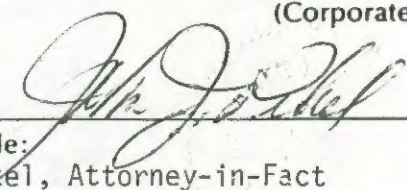
**CONTRACTOR AS PRINCIPAL**

Company: DEHNER CONSTRUCTION, INC. (Corporate Seal)

Signature:   
Name and Title: Gregory Dehner, President

(Any additional signatures appear on page 3)

**SURETY FIDELITY AND GUARANTY INSURANCE COMPANY**  
Company: (Corporate Seal)

Signature:   
Name and Title: John J. Pikel, Attorney-in-Fact

(FOR INFORMATION ONLY—Name, Address and Telephone)

**AGENT or BROKER:**

YASTE ZENT & RYE AGENCY, INC.  
P.O. Box 1367  
Fort Wayne, IN 46801  
219/423-1591

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

**10** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

**11** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## **12 DEFINITIONS**

**12.1** Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**12.2** Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**12.3** Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

**12.4** Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

## **MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY FIDELITY AND GUARANTY INSURANCE COMPANY  
Company: (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

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# FIDELITY AND GUARANTY INSURANCE COMPANY



## Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

DEHNER CONSTRUCTION, INC.  
2110 Lower Huntington Road  
Fort Wayne, IN 46819

**SURETY (Name and Principal Place of Business):**

FIDELITY AND GUARANTY INSURANCE COMPANY  
135 N. Pennsylvania Ave., Suite 1000  
Indianapolis, IN 46204

**OWNER (Name and Address):**

City of Fort Wayne  
Board of Public Works & Safety  
1 Main Street  
Fort Wayne, IN 46802

**CONSTRUCTION CONTRACT**

Date: April 16, 1990

Amount: \$106,409.24

Description (Name and Location): Water Contract 90-02; Hillcrest Phase III  
Water Main Replacement

**BOND**

Date (Not earlier than Construction Contract Date): April 16, 1990

Amount: \$106,409.24

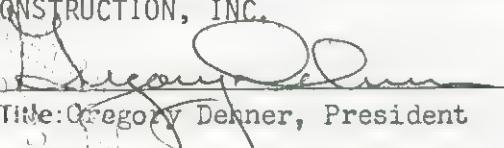
Modifications to this Bond:

☒ None

☐ See Page 6

**CONTRACTOR AS PRINCIPAL**

Company: DEHNER CONSTRUCTION, INC. (Corporate Seal)

Signature:   
Name and Title: Gregory Dehner, President

(Any additional signatures appear on page 6)

**SURETY FIDELITY AND GUARANTY INSURANCE COMPANY**

Company: (Corporate Seal)

Signature:   
Name and Title: John J. Pikel, Attorney-in-Fact

(FOR INFORMATION ONLY—Name, Address and Telephone)

**AGENT or BROKER:**

YASTE, ZENT & RYE AGENCY, INC.  
P.O. Box 1367  
Fort Wayne, IN 46801  
219/423-1591

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

- .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

**14** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### **15 DEFINITIONS**

**15.1** Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**15.2** Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**15.3** Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

#### **MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY FIDELITY AND GUARANTY INSURANCE COMPANY  
Company: (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

FGIC

CERTIFIED COPY  
GENERAL POWER OF ATTORNEY

NO. FGIC 597

KNOW ALL MEN BY THESE PRESENTS:

That FIDELITY AND GUARANTY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Iowa, and having its principal office at 100 Light Street, Baltimore, Maryland 21202, does hereby constitute and appoint Gerald A. Dahle, John J. Pikel, Donald T. Belbutowski and Diane T. Green

of the City of Fort Wayne, State of Indiana, its true and lawful Attorneys-in-Fact, with power and authority to sign its name as surety to, and to execute, seal, acknowledge and deliver any and all bonds, undertakings, recognizances or other written obligations in the nature thereof; and the said FIDELITY AND GUARANTY INSURANCE COMPANY hereby ratifies and confirms all of the acts of said Attorneys-in-fact, pursuant to these premises.

This appointment is made under and by authority of a by-law of the said FIDELITY AND GUARANTY INSURANCE COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney.

IN WITNESS WHEREOF, the said FIDELITY AND GUARANTY INSURANCE COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signature of its Assistant Vice-President and Assistant Secretary, this 8th day of April, 19 88.

FIDELITY AND GUARANTY INSURANCE COMPANY

(Signed) By W. J. D. Somerville, Jr. ....  
Assistant Vice-President.

(SEAL) (Signed) W. R. Holley .....  
Assistant Secretary.

STATE OF MARYLAND  
BALTIMORE CITY ss:

On this 8th day of April, 19 88, before me personally came W. J. D. Somerville, Jr., Assistant Vice President of FIDELITY AND GUARANTY INSURANCE COMPANY and W. R. Holley, Assistant Secretary of said Corporation, with both of whom I am personally acquainted, who being by me severally sworn, said that they, the said W. J. D. Somerville, Jr., and W. R. Holley were respectively the Assistant Vice President and Assistant Secretary of the said FIDELITY AND GUARANTY INSURANCE COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal; that it was so affixed by authority of the by-laws of said corporation; and that they signed their names hereto like authority as Assistant Vice President and Assistant Secretary, respectively, of the Corporation.

My Commission expires the first day of July, 19 90.

(SEAL) (Signed) Margaret M. Hurst .....  
NOTARY PUBLIC

Read the first time in full and on motion by Burns, seconded by Edmonds, and duly adopted, read the second time by title and referred to the Committee on City Affairs (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATED: 5-22-90

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Burns, seconded by Edmonds, and duly adopted, placed on its passage. PASSED ~~UNANIMOUSLY~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>6</u>		<u>1</u>	<u>2</u>
<u>BRADBURY</u>				<u>✓</u>
<u>BURNS</u>	<u>✓</u>			
<u>EDMONDS</u>	<u>✓</u>			
<u>GIAQUINTA</u>				<u>✓</u>
<u>HENRY</u>	<u>✓</u>			
<u>LONG</u>			<u>✓</u>	
<u>REDD</u>	<u>✓</u>			
<u>SCHMIDT</u>	<u>✓</u>			
<u>TALARICO</u>	<u>✓</u>			

DATED: 6-12-90

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) \_\_\_\_\_ (APPROPRIATION) \_\_\_\_\_ (GENERAL) \_\_\_\_\_ (SPECIAL) \_\_\_\_\_ (ZONING MAP) \_\_\_\_\_ ORDINANCE \_\_\_\_\_ RESOLUTION NO. S-128-90 on the 12th day of June, 1990,

Sandra E. Kennedy ATTEST  
SANDRA E. KENNEDY, CITY CLERK

SEAL  
Charles S. Reed  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of June, 1990, at the hour of 11:45 o'clock A. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 22-2 day of June, 1990, at the hour of 3:00 o'clock P. M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Contract #90-02, Hillcrest PH. III Water Main Replacement

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works & Safety

SYNOPSIS OF ORDINANCE: The Contract for #90-02, Hillcrest Ph. III Water Main Replacement, is for the following: Installation of 4310+ LF of 6" Ductile iron water main on Edgeknoll Lane from Calhoun Street SE to Corwin Lane: also on Corwin Lane from Edgeknoll Lane to its NW terminus. Dehner Construction Inc., is the contractor.

*S-90-05-38*

EFFECT OF PASSAGE: Improved water conditions at above location

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$106,409.24

ASSIGNED TO COMMITTEE:

BILL NO. S-90-05-38

REPORT OF THE COMMITTEE ON CITY UTILITIES

PAUL M. BURNS, CHAIRMAN  
MARK E. GIAQUINTA, VICE CHAIRMAN  
HENRY, LONG, TALARICO

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving CONTRACT  
#90-01, HILLCREST PH. III WATER MAIN REPLACEMENT between  
DEHNER CONSTRUCTION INC. and the City of Fort Wayne, Indiana, in  
connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

*Paul M. Burns*  
*Mark E. Giaquinta*  
*Samuel Talarico*

*Henry Long*

DATED: 6-12-90

Sandra E. Kennedy  
City Clerk